

DECISION

12868
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-194360

DATE: February 15, 1980

MATTER OF: Stephen M. Hornberger - [Setoff of Discharged Debt]

DIGEST: A transferred employee received a travel advance that was not completely liquidated. Prior to the submission of any more claims relating to the transfer, the employee filed for bankruptcy. The unliquidated portion of the travel advance was scheduled as a debt in the bankruptcy proceeding, and was discharged with the remainder of his debts. After receiving the discharge the employee sold his residence at his former duty station, and filed a claim for reimbursement of appropriate real estate expenses. The claim should be paid in full because the discharged debt may not be set off against a claim that arises subsequent to the discharge.

We have been asked whether or not an unliquidated travel advance that was scheduled as a debt and discharged in a bankruptcy proceeding may be set off against a claim by the bankrupt employee that arose subsequent to the bankruptcy discharge. For the reasons set forth below, we hold that the discharged debt may not be set off against the latter claim.

The matter was submitted by the United States Property and Fiscal Officer for Florida, National Guard Bureau, and has been assigned control number 79-4 by the Per Diem, Travel and Transportation Allowance Committee. ³⁹¹⁹

Under Travel Orders issued January 27, 1977, Mr. Stephen M. Hornberger, an employee of the National Guard Bureau, was transferred from New Castle, Delaware, to Miami, Florida. To assist in this move Mr. Hornberger was given a \$2,500 travel advance. He reported to his new duty station on February 20, 1977.

On vouchers submitted in March 1977, Mr. Hornberger was allowed reimbursement, less taxes due, in the amount of \$1,793.76 leaving \$706.24 as the unliquidated portion of his travel advance. Mr. Hornberger was advised that he should repay that amount.

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In a notice dated April 7, 1978, the National Guard Bureau was informed that Mr. Hornberger had filed for bankruptcy in the United States District Court for the Southern District of Florida. The unliquidated portion of the travel advance was on his schedule of debts. On May 24, 1978, the National Guard Bureau filed a Proof of Claim alleging that it was entitled to have Mr. Hornberger's debt given priority for payment and a "Petition for Determination of Nondischargeability of Debt Due the United States of America." The Petition alleges that the debt is nondischargeable under 11 U.S.C. 35, but gives no more specific information as to why that section governs.

The Petition was dismissed by the Bankruptcy Judge on June 21, 1978, for failure to comply with the bankruptcy rules. The National Guard Bureau was given 10 days to correct the errors in the Petition and refile. No further action was taken by the National Guard Bureau.

There is nothing in the record to indicate what, if any, action was taken on the claim that the National Guard Bureau was entitled to a priority, nor is there any indication whether the creditors received any payments from the bankrupt's estate. We will assume, therefore, that no priority was granted, and no funds were paid from the bankrupt's estate.

On July 5, 1978, Mr. Hornberger was granted a Discharge of Bankruptcy. There is nothing in the record to indicate that Mr. Hornberger's debt to the National Guard Bureau was not discharged.

On July 12, 1978, settlement was held for the sale of Mr. Hornberger's residence at his old duty station. On August 4, 1978, Mr. Hornberger submitted a claim for reimbursement of expenses incurred incident to that sale in the amount of \$2,650, all of which is apparently allowable. The National Guard Bureau has paid Mr. Hornberger \$1,943.76, and asks us whether they may now use the remainder of the reimbursement claimed to repay the prior unliquidated amount that was discharged in the bankruptcy proceeding.

First, the Government may, under the proper circumstances be entitled to a priority in the distribution of a bankrupt's estate. In re Belkin, 358 F. 2d 378 (6 Cir. 1966). However, there is nothing in the record to indicate that a priority was granted here. The only

application returned to the National Guard Bureau was the Petition for nondischargeability. The asserted grounds for the Petition are not clear, but whatever right might have existed died when the Bureau failed to refile in accordance with the Judge's instructions.

In its submission the National Guard Bureau contends that the unliquidated portion of the travel advance was not a debt, and, therefore, could not be discharged in the bankruptcy proceeding. However, we have held that when an employee receives an advance of funds, he is then in debt to the United States. B-178595, June 27, 1973. The action taken by the National Guard Bureau to attempt to establish a priority and even the nondischargeability of the debt was proper, and should have been pursued.

Once Mr. Hornberger's debt to the United States was scheduled and released by the discharge, the Government could no longer collect that debt or any part of it by setting off against currently accruing amounts that may be owed to Mr. Hornberger. 45 Comp. Gen. 342 (1965).

The reimbursement claimed by Mr. Hornberger for the sale of his residence at his former duty station is not available to be set off against the earlier unliquidated advance. On the date Mr. Hornberger received his discharge in bankruptcy, he had no right to that reimbursement because he had not yet sold his house. That reimbursement had no connection with the bankruptcy proceeding, and was not an asset of the bankrupt's estate. The situation is analogous to the facts of Avant v. United States, 165 F. Supp. 802 (E.D. Va. 1958), in which an attempt was made to set off a discharged debt against a Government employee's contribution to the Civil Service Retirement Fund when the employee retired from Government service about eight months after he received his discharge in bankruptcy. The court held that at the time of his discharge in bankruptcy the employee had no right to receive either an annuity or the return of his contributions, so that discharged debt could not be set off. Here, Mr. Hornberger had no right to the reimbursement he now claims on the day he received his discharge because he had not yet incurred the expenses.

Therefore, the unliquidated portion of Mr. Hornberger's earlier travel advance, which was released by the discharge from bankruptcy, may not be set off against the new claim, and he should be paid the full amount claimed if the voucher is otherwise correct.

R. J. K. 1974
Deputy Comptroller General
of the United States